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EXAMINER

FISCHER, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,303

Applicant(s)

OGASAWARA, NOBUO

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 24-40 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,3-9 and 24-40 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 C.F.R. §1.114

1. A request for continued examination ("RCE") under 37 C.F.R. §1.114, including the fee set forth in 37 C.F.R. §1.17(e), was filed in this application on March 22, 2005. This application was under a final rejection (the Third Final Office Action, mailed November 3, 2004) and is therefore eligible for continued examination under 37 C.F.R. §1.114. Because the fee set forth in 37 C.F.R. §1.17(e) has been timely paid, the finality in the previous Third Final Office Action has been withdrawn pursuant to 37 C.F.R. §1.114.

Acknowledgements

2. In accordance with the RCE noted above, Applicant's after final amendment filed January 28, 2005 has now been entered. Accordingly, claims 1, 3-9, and 34-40 remain pending.
3. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-9, and 34-40, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Swartz in view of Rivalto (U.S. 5,482,139). Swartz discloses and does not disclosed as noted above. Rivalto teaches removing dates and/or perishable goods from the inventory by knowing precisely when the particular expiration dates will occur.

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Swartz as taught by Rivalto to include detecting an expired product based upon the shelf-life limitation information and removing the expired product from the inventory list. Such a modification would have helped the user implement e.g. the process in Rosenweig et. al. (U.S. 6,188,991 B1) ("Rosenweig") where the user could determine which recipes could be made from the user's inventory. By removing this an expired product from inventory, it would be as if the product didn't exist allowing the user to prepare more healthier foods. See e.g. Murrah (U.S. 5,691,684) and Reber et. al. (U.S. 5,798,694) for an exemplary device removing products from inventory using bar codes or radio frequency ("RF") devices.

7. Claims 1, 3-9, and 34-40, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Howard et. al. (U.S. 6,513,017 B1)("Howard"). Howard discloses the claimed invention but does not directly disclose a receipt. It is the

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Examiner's position that customer receipts or customer logs are inherent virtually all consumer transactions. In fact, using the grocery clearing house in Howard would require the use of receipts to track sales.

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Howard to expressly disclose providing a receipt. Such a modification would have disclosed an industry standard procedure of providing receipts to customers.

8. For due process purposes, the Examiner again confirms that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings.

9. Except for the rejections involving Sone, the Examiner maintains his conclusions of law and findings of fact as noted in the Third Final Office Action.

Response to Arguments

10. Applicant's arguments are persuasive with respect to Sone.

11. However Applicants have failed to address the other rejections present in the Third Final Office Action. Those rejections remain.

Conclusion

12. References considered pertinent to Applicants' disclosure are listed on form PTO-892.

Unless expressly noted otherwise by the Examiner, all references listed on form PTO-892 are cited in their entirety.

13. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8th Edition, August 2001.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

15. Also in accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the reference, Production and Inventory Control Handbook, 3rd Ed. with James H. Greene as Editor-in-Chief ("Greene") is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. First, the Examiner finds that Greene provides an introduction to the basics of production and inventory control. In other words, Greene covers production and inventory control in its broadest sense. The Examiner also finds that the reference is a introductory handbook which serves at least

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professionals, students, and persons designing control systems and is considered a resource for general managers, chief operating officers, sales managers, and general production managers. The reference is cited in its entirety. In particular, Greene is about planning, controlling, and managing production and inventories through systems and an organization; and applying principles, methods, and models, based on facts, knowledge, forecasts, and predictions to accomplish goals and objectives. Finally, the Examiner finds that Greene includes discussions which are broad enough to include both large and small businesses; covers the process industries as well as the assembly and fabrication industries; covers businesses that produce to order as well as those that ship 'off the shelf;' and concerns itself with distribution inventories as well as manufactured inventory, from the simple manufacturing processes to the very complex. Because of the factual findings noted in this paragraph and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that Greene is primarily directed towards those of low skill in this art. Because Greene is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within Greene.

16. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicants disagree with any additional factual determination or legal conclusion made by the Examiner in this Office Action

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whether expressly stated or implied,¹ the Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next properly filed response. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (571) 272-6779. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (571) 272-6788. The fax number for facsimile responses is now (703) 872-9306.



Andrew J. Fischer
Primary Examiner
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AJF
May 2, 2005

¹ E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.